

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested. Claims 1-2 and 4-8, 10-21, 23-26 and 28-29 are pending, Claims 1, 23, and 28 having been amended, Claim 3 cancelled and Claim 29 having been added by way of the present Amendment.

In the outstanding Office Action, Claim 28 was rejected under 35 U.S.C. § 101; Claims 1-2, 4-8, 10-19, 20, 21, 27 and 28 were rejected as being unpatentable over Lindholm et al. (U.S. Patent Publication 2004/0019801, hereinafter "Lindholm"); in view of Treffers et al. (U.S. Patent Publication 2002/0023219, hereinafter "Treffers"); Claim 3 was rejected as being unpatentable over Lindholm in view of Yamada et al. (U.S. Patent No. 6,144,743).

In reply Claim 28 has been amended to define a non-transitory computer readable medium that includes the features of Claim 23. It is believed that Claim 28 as amended, defines statutory subject matter, particularly in light of the guidance provided by Director Kappos regarding how the Office will construe non-transitory computer readable media claims. However if the Examiner disagrees, the Examiner is invited to telephone the undersigned so that mutually agreeable claim language may be identified.

While the Office Action indicates that certain claims are rejected under 35 U.S.C. § 102, the undersigned construes the rejection as being one under 35 U.S.C. § 103, since two references are used to make the rejection. Also, the listing of claims provided at paragraph 4 is noted to be inconsistent with the actual claims discussed in the subsequent pages of the Office Action, which include canceled Claims 22 and 27.

The subject matter of Claim 3 has been incorporated into amended Claims 1, 23, and 28. Thus no new matter is added. Thus the rejection appropriate for the amended claims relates to Claim 3, and is based on the combination of Lindholm in view of Yamada. The Office Action asserts that Lindholm discusses at paragraph [0033], lines 1-17 and paragraph

[0040], lines 1-10, certain features of the active part and passive part, as claimed, and as will now be discussed. Applicants respectfully traverse this assertion.

In paragraph [0033], Lindholm describes “[a]s for the pre-encryption (and/or pre-integrity protected) approach, this approach is similar to the "on-the-fly" approach illustrated in FIG. 2. The main difference is that the content is encrypted before it is placed on the content server 10 so that whatever content is stored on the content server is already encrypted. This pre-encryption relieves the burden on party A of having to use a trusted or secure content server. Instead, party A may place its encrypted content on any available server. The encryption keys may then be distributed by party A over the secure connection (step 202) to the other involved parties along with location information for the content and security parameters. The other involved parties may thereafter use the encryption keys to access and decrypt the content on the content server. This approach has the advantage of requiring almost no additional functionality on the content server, such as encryption functionality, relative to the "on-the-fly" approach.”

This discussion in Lindholm is actually a process that is diametrically opposed to the subject matter of Claim 3 which has now been incorporated into the amended independent claims. In particular, amended Claim 1 requires that the active part of the active content be adapted to permanently deny decryption of the content if the information comprised in the hidden part does not comply with the rules of the active part. Lindholm on the other hand provides for the contents being encrypted before it is placed on the content server and further provides over a secure connection an encryption key to access and decrypt the content on the content server. Therefore, Lindholm provides all of the necessary means and methods to ensure that a party who has received the encryption key may decrypt, and therefore, gain access to the content. The above features included now in amended Claim 1, are in contrast

to these features in Lindholm, as the claim requires that an active part be adapted to deny decryption of the content.

In addition, Lindholm is directed to a system that relies on a streaming server (cover figure), that operates with a plurality of devices (see Figures 2-4). In particular, content is provided in one device, and the securing server is a fundamental component in coordinating the encryption. Claim 1, for example, has been amended to clarify that the data recording and processing method is performed in at least one of a consumer electronic device and a personal computer. In contrast, Lindholm operates on a system that includes multiple devices. Claim 1 is further amended to require that the recording and processing medium pertain to at least one of the consumer electronic device and a personal computer, where once again Lindholm operates on a system that includes three different devices.

Yamada also operates on a system that includes multiple devices communicating with one another (see e.g., Figures 5, 6 and 1, showing as server and client). On the otherhand, amended Claim 1 describes a system that operates on at least one of a consumer electronic device and a personal computer, not in a system requiring an intermediate server that would enable the playback of content on a consumer electronic device or personal computer.

Furthermore, Lindholm neither describes "... content comprised in the passive part of the active content", and that the "rules are of the active part", as claimed. Applicants agree with the Examiner that Lindholm does not expressly teach the active part (3) of the active content (8) ... adapted to permanently deny encryption of the content (1) comprised in the passive part (2) of the active content if the information comprised in the hidden part (6) does not comply with the rules (5) of the active part (3), as claimed.

The Office Action attempts to bolster the rejection with a further description in Lindholm at paragraph [0040], lines 1-10 and in Yamada column 8, lines 58-65. However, this description in Lindholm states: "Once the personal content server 44 verifies that all

involved parties have a valid DRM module, it verifies (again at step 402) that party A has the right to access and to share DRM content with other terminals. After this verification, the personal content server 44 obtains at step 404 the DRM protected content from the DRM content provider 48. Thereafter, each time one of the parties requests the DRM protected content, the personal content server 44 can reacquire the content from the DRM content provider 48, or it can store a copy of the content locally for subsequent access.” Similarly, Yamada describes “[t]he copy inhibition period information 48 indicates a copy inhibition period, i.e., a copy denial period, and is given when the copy grant code is "0" indicating copy denial. This copy inhibition period information 48 can describe a maximum of 10 years 7 months=127 months, and if the code is "0000000", it indicates permanent copy denial.” In this description in Lindholm it appears that this language also is similarly deficient as that discussed above with regard to paragraph [0033] since paragraph [0040] in Lindholm does not describe the active part of the active content being adapted to permanently deny decryption ... if the information comprised in the hidden part does not comply with the rules of the active part”, as claimed.

The Office Action relies also on Yamada’s disclosure to cure this deficiency. However, the undersigned submits that Yamada does not describe “the active part being adapted to permanently deny decryption of the content comprised in the passive part”, as claimed. Thus, it is respectfully submitted that no matter how Lindholm and Yamada are combined the combination does not teach or suggest all of the features of amended Claim 1. Similarly, it is believed that amended Claims 23 and 28 patentably define over the asserted prior art. Likewise, it is believed that Treffers does not cure the deficiencies discussed above with regard to Lindholm and Yamada.


Claim 29 has further been added to emphasize the point that the medium is included in a single device, namely at least one of a consumer electronic device and a personal

computer that includes an operating system. The operating system includes a hidden part. This has been added to emphasize the difference between Yamada and Lindholm, both of which, operate over multiple devices, and do not hide the equivalent of the claimed hidden part in an operating system, that is invisible to a user.

As such it is respectfully submitted that Claims 1-2, 4-8, 10-21, 23-26, 28 and 29, as amended, define statutory subject matter, and patentably define over the assert prior art. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)